IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 678 OF 2007

Subhash Baburao Pagar & ors.... Petitioner

versus

Pratap Yadav Pagar & ors..... Respondent.

Mr. S.C.Shinde i/b. Vinod Shah for the petitioner
Shri P.J.Thorat i/b.Ranjit A.Thorat for the respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 04TH SEPTEMBER, 2007

P.C.;

1. The original plaintiffs instituted a suit for partition and separate possession, contending that the suit properties are the joint family properties, against the defendants. The present petitioners are the defendants. It is the case of the defendants that the suit properties are self acquired property of the predecessor in title of the defendants. An application at Exh. 5 was moved by the plaintiff seeking to restrain the defendants from alienating the suit property and/or from creating a third party interest therein, as the plaintiffs were apprehending that the defendants may dispose of the properties. Though the trial court rejected the application, the First Appellate court allowing the Misc.Civil Appeal has granted temporary injunction restraining the defendants from alienating the property and/or from

creating an encumbrances in favour of a third person till the final decision.

2. As the question involved in the suit is as to whether the suit properties are joint family property or is self acquired properties, require leading of evidence and consideration of the same and the issue can be appropriately adjudicated after the evidence is led. On a primafacie consideration, the First Appellate Court has relied upon some revenue entries, indicating that the predecessor in title of the present defendants was acting as kartha and, thus has found that a case being made out for grant of temporary injunction, has passed an order. I do not see any illegality in the impugned order warranting any interference. Hence Writ Petition needs to be summarily dismissed. Order accordingly.

3. However, at this stage, the learned counsel for the petitioner submits that the petitioners should atleast be permitted to mortgage part of the property with the Land Development Bank or a Co-operative Bank so that the petitioners can raise money for cultivation. I permit the petitioner to make an appropriate application before the trial court seeking modification of the order. The learned counsel also proposes to file an amendment application. If it so

filed the same shall be decided by the trial court in accordance with the law.

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